

January 20, 2005

Ms. Rosario Marin
Chair, California Integrated Waste Management Board
1001 I Street
Sacramento, CA 95812

RE: Comments on December 17, 2004 Draft Report to the Legislature: Film Plastic Diversion and Plastic Trash Bag Program

Dear Chairwoman Marin:

Poly-America L.P. is pleased to submit these comments on the December 17, 2004 draft report to the Legislature on film plastic diversion and the trash bag program. This letter follows previous comment letters dated August 31 and October 15.

Poly-America appreciates the significant revisions made by the staff in the Recommendations section of the report. In discussions with staff and other stakeholders over the last two years, we have consistently made the point that the trash bag law, though well-intended and more effective in the past, has been rendered ineffective by two main facts: 1) trash bags are one of the most difficult products to manufacture with recycled plastic, because of the thinness of the bags and the strength demands of the product; and 2) the supply of usable recycled plastic feedstocks that Poly-America procured in the past is no longer available, largely due to the emergence of composite lumber in the marketplace. For these reasons, we have argued that the plastic trash bag law is outmoded and should be replaced with a more comprehensive approach that recognizes the constraints on the procurement and use of recycled plastic.

The new draft replaces a proposal that continued to depend on recycled content requirements for trash bags as well as a variety of other plastics products with a new concept built around Memoranda of Understanding entered into by the Board and various industry sectors. We believe this is an improvement, because it is less regulatory, less prescriptive, and relies on industry participation and input into solutions designed by the industry.

We do, have several concerns that we hope can be addressed by the Board.

1) **Mill Fee Proposal:** The MOU proposal also contemplates a mill fee that would be assessed by the Board on those parties who either fail to enter into an MOU or who fail to meet the obligations of an MOU. The draft report states, on page 17: "If the diversion targets are not met for a specific film plastic category, all wholesalers, distributors, importers and manufacturers who direct sell to end-users of that category would pay a per pound mill fee." We believe it is unfair for a company that has met its obligations under an MOU to incur a fee on its product because of the failure of others in the industry to do the same. This is particularly relevant for trash bag manufacturers, where there are several very large producers and a much greater number of smaller producers.

2) **Suspension vs. Repeal of Trash Bag Law:** The report recommends legislation be adopted that would suspend implementation of the trash bag law and give the Board the authority to impose the mill fee. The report recommends that the law be repealed only when the MOU diversion targets are met or the mill fee is imposed on trash bag manufacturers. Poly-America certainly believes the law should be, at a minimum, suspended as soon as possible. But we urge the Board instead to seek repeal of the law in 2005 because it is inconsistent with the new approach proposed by staff. Under that proposal, the Board would be given the authority to impose a mill fee on parties who do not meet their MOU obligations. The threat of a mill fee is intended to create a strong incentive for companies to honor the MOU, and we agree it will do so. No company wants to see its product price increase due to the mill fee. With the effective "hammer" of the mill fee, there is no need to retain the trash bag law. In fact, if it is retained, trash bag manufacturers will be singled out as the only film plastic sector subject to two onerous requirements: a mill fee and the recycled content requirements in the trashy bag law. This double whammy is especially unfair, because we are the only film plastic sector that, for that last 13 years, has been subject to regulation of its products.

3) **MOU as Applied to Trash Bags:** Most importantly, we urge the Board to consider the unique situation plastic trash bag manufacturers will face if your proposal is implemented. The goal of the MOUs is to commit parties to increasing the diversion of film plastic products from landfills. Unlike any other product being considered by the Board, trash bags are designed to go to the landfill. No one argues the important public health and efficiency advantages trash bags have brought to waste collection. For more than a decade we have done our best to use our products to divert plastic by using recycled content and by reducing the thickness of our bags. Your staff is by now well versed on the current situation. Bags have been source reduced as much as they can be without weakening the integrity of the product, which, after all, must perform its function without splitting or puncturing. Our ability to use recycled plastic in trash bags has always been marginal, and in recent years it has become much more so because previous supplies have shifted to other uses -- like composite lumber.-- that also divert the plastic from landfills. And unlike other products, that can be pulled off a MRF line for reuse, that option obviously is not viable for trash bags.

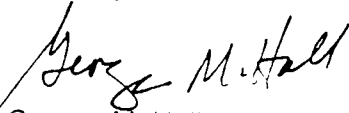
Given these limitations, we are hard put to think of what steps we and other trash bag manufacturers could take under an MOU to divert film plastic from the landfill. It is for this reason that we strongly urge the Board to exclude plastic trash bags from your new proposal. The Board is clearly on the right track in proposing to create a comprehensive program to deal with all film plastics. For the first time, the Board will have the opportunity to make a significant impact in diverting film plastics from landfills. But at the same time we hope you realize that because the sole purpose of a trash bag is to go to a landfill, it is a unique product that presents no options for landfill diversion.

Poly-America wants to stress that we do not propose that you exclude trash bags from the program so that our company can escape your new program. In fact, Poly-America manufactures a variety of other products that would be subject to this proposal, and we

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will be an active participant in crafting and meeting MOU requirements for those products. Our concern is specifically with trash bags and the unique difficulties in diverting them from landfills.

Sincerely,

A handwritten signature in cursive script that reads "George M. Hall".

George M. Hall
Vice President, Manufacturing

cc: Mr. James Branham, Undersecretary, CalEPA
Ms. Linda Moulton-Patterson, CIWMB Member
Ms. Rosalie Mule, CIWMB Member
Mr. Michael Paparian, CIWMB Member
Ms. Cheryl Peace, CIWMB Member
Mr. Carl Washington, CIWMB Member
Mr. Mark Leary, Executive Director, CIWMB
Ms. Patty Zwarts, CalEPA
Mr. Richard Costigan, Legislative Secretary, Office of the Governor
Mr. Dennis Albani, Legislative Affairs, Office of Governor
Mr. Mike Leao, CIWMB
Mr. Bill Orr, CIWMB